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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-1574

UNITED MINE WORKERS OF AMERICA, et al.,
Petitioners,

v.

ARMCO STEEL CORPORATION, et al.,
Respondents.

UNITED MINE WORKERS OF AMERICA, et al.,
Petitioners,

v.

UNITED STATES STEEL CORPORATION,
Respondent.

BRIEF BY UNITED STATES STEEL CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BRIEF BY UNITED STATES STEEL CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Respondent, United States Steel Corporation, opposes the petition for writ of certiorari for the reasons presented herein.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Where a labor agreement contains a broad arbitration clause providing for arbitration of disputes as to "the meaning and application of the provisions of [the] agreement," or a difference ". . . about matters not specifically mentioned in [the] agreement", or ". . . local trouble of any kind aris[ing] at the mine," does a federal court have jurisdiction under Section 301 of the Labor-Management Relations Act of 1947, as amended, to enjoin a work stoppage resulting from the refusal of employees to cross a picket line established by non-employee members of the Union and to order arbitration of the underlying dispute as to whether such conduct violates the labor agreement?

STATEMENT OF THE CASE

This case grows out of the gasoline shortage in West Virginia in early 1974 and the actions taken by the United Mine Workers of America (the "UMW"), and its members allegedly to protest this shortage and the order of the Governor of West Virginia that gasoline tanks could not be refilled unless they were less than one-fourth full.

Respondent, United States Steel Corporation, through its Gary Coal District, operates five mines and a coal preparation and maintenance shop in McDowell County, West Virginia, and other mines in Wyoming and Mingo Counties, West Virginia.

The six defendant Local Unions of the United Mine Workers of America represent the approximately 1500 production and maintenance workers employed by plaintiff at its Gary Mines and at its coal preparation plant and maintenance shop, located in McDowell County, West Virginia. All of the defendant Local Unions are in District 29 of the United Mine Workers of America, an administrative division of the UMW with offices in Beckley, West Virginia.

At the time material to this proceeding, United States Steel Corporation, the UMW, its District 29, and the six Local Union defendants were parties to the National Bituminous Coal Wage Agreement of 1971. The "Settlement of Disputes" provision of the agreement contains a detailed grievance procedure and a broad arbitration clause which provides for final and binding arbitration of "differences . . . between the Mine Workers and [United States Steel Corporation] as to the meaning and application of the provisions of [the] agreement . . ." and "differences . . . about matters not specifically

mentioned in [the] agreement . . ." and "any local trouble of any kind [arising] at the mine. . . ."

On the evening of February 24, 1974, unidentified members of the UMW, allegedly protesting the gasoline shortage and the Governor's quarter tank rule, began picketing plaintiff's McDowell County mines and its preparation plant and machine shop. The pickets were not employees of United States Steel Corporation but, rather, of other mining companies in the area. Employees scheduled for the 12:01 a.m. shift on February 25, 1974, refused to cross these picket lines to go to work. The work stoppage resulting from the picketing of plaintiff's mines, its coal preparation plant and machine shop continued from February 25 until an injunction pending appeal, which was granted by the Court of Appeals for the Fourth Circuit, went into effect on March 14, 1974.

Since plaintiff provided its employees with gasoline if they needed it, none of the members of the defendant Local Unions were affected by the alleged gasoline shortage. The sole reason given by the presidents of the six Local Union defendants for the failure of their members to report for work as scheduled was their unwillingness to cross the picket lines set up by the unidentified members of the UMW[1], even though the evidence showed that this picketing was sporadic.

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1. Actually, two of the six Local Union presidents testified that they had never seen any pickets and two others testified that they had only seen pickets once, on the first day of the work stoppage, and that the pickets had not stopped or prevented them from going to work. The remaining two presidents only saw the pickets twice, and they did not testify that the pickets physically prevented them from going to work.

United States Steel Corporation brought an action under Section 301 of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. § 185) to enjoin the work stoppage and for an order requiring defendants to comply with the grievance-arbitration procedure of the National Bituminous Coal Wage Agreement of 1971 (the "Agreement").

The District Court issued a temporary restraining order enjoining the six Local Union defendants from engaging in a strike or work stoppage over any dispute subject to resolution under the grievance-arbitration procedure of the Agreement. However, the temporary restraining order specifically provided that it should not be construed to require the members of these Local Unions to "cross an actual picket line established by persons who are not members of defendant Local Unions . . . ." (Pet. App. C, 15).

After hearing, the District Court found that no members of the defendant Local Unions had been unable to report for work because of a lack of gasoline and that plaintiff was suffering irreparable injury from the refusal of its employees to cross the picket lines established by the non-employee members of the UMW. Nevertheless, the District Court concluded that their refusal to cross the picket line was not an arbitrable matter and that no arbitrable matter had been alleged or proved. On this basis, the District Court denied plaintiff's application for preliminary and permanent injunctive relief. (Pet. App. D, 17-18).

In a unanimous opinion, the Court of Appeals for the Fourth Circuit reversed. It concluded, on the authority of *Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368 (1974), that under the National Bituminous Coal

Wage Agreement of 1971 the Union had a duty to submit any arbitrable issue to binding arbitration and an implied obligation not to strike over such issues. (Pet. App. A, 4-5). The Court found that the dispute as to whether plaintiff's employees had a right to refuse to cross the picket line established by non-employee members of the UMW was an arbitrable matter under the broad language of the grievance-arbitration procedure of the Agreement. (Pet. App. A, 5-7). Finally, the Court rejected the contention that defendants' members had a federally protected right to honor the picket line. The Court held that such a right may be waived and was waived by the action of the Union in agreeing to a broad arbitration clause which gives rise to an implied no-strike obligation. (Pet. App. A, 7-8).

Applying this Court's decision in *Boys Markets v. Clerks Union,* 398 U.S. 235 (1970), the Court of Appeals concluded that the District Court erred in failing to enjoin the work stoppage and to order arbitration of the dispute (Pet. App. A, 8-9).

REASONS FOR DENYING THE WRIT

The decision of the Court of Appeals is clearly correct and in accordance with applicable decisions of this Court.

Section 203(d) of the Labor-Management Relations Act of 1947, as amended (29 U.S.C. § 173(d)) provides that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

This Court has formulated an expansive body of federal labor law grounded upon the basic premise of Section 203(d) that industrial stability is best fostered by the substitution of arbitration for industrial strife. Under *Steelworkers v. Warrior & Gulf Co.,* 363 U.S. 574, 582-583 (1960):

> ". . . An order to arbitrate the particular grievance should not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

In the present case, the "Settlement of Disputes" procedure provides for final and binding arbitration of disputes "as to the meaning and application of the provisions of [the] agreement," disputes "about matters not specifically mentioned in the agreement" and "any local trouble of any kind aris[ing] at the mine. . . ." It would be difficult to conceive of a broader arbitration clause. The Agreement further states that both parties "agree and affirm . . . that all disputes and claims which are not

settled by agreement shall be settled by the machinery provided in the 'Settlement of Disputes' article. . . ." It excepts from the arbitration obligation only those disputes "national in character," which the present dispute admittedly is not.

Although the National Bituminous Coal Wage Agreement does not contain an express no-strike clause, this Court has held that since the Agreement makes arbitration the exclusive and compulsory means for finally resolving disputes, "this arbitration provision gives rise to an implied no-strike duty.": *Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368 (1974). See, also, *Local 174, Teamsters Union v. Lucas Flour,* 369 U.S. 95 (1962); *Old Ben Coal Corp. v. Mine Workers,* 457 F.2d 162 (7th Cir. 1972); *Blue Diamond Coal Co. v. Mine Workers,* 436 F.2d 551 (6th Cir. 1970).

The controversy as to whether the refusal of plaintiff's employees to cross the picket line established by non-employee members of the UMW violated this implied no-strike obligation is clearly an arbitrable matter under the Agreement: *Gateway Coal Co. v. United Mine Workers, supra.*

Since the labor agreement required the parties to adjust this controversy through the "Settlement of Disputes" procedure, the District Court had authority under *Boys Markets v. Clerks Union,* 398 U.S. 235 (1970), to enjoin the work stoppage and to order arbitration of the dispute because plaintiff had established that the injunction was warranted under ordinary principles of equity and had met all of the other criteria for injunctive relief.

Petitioners do not really contend that the dispute as to whether the refusal to cross the picket line and resulting work stoppage violated the labor agreement was not arbitrable. Indeed, they studiously ignore that question. Rather, they argue that since there was no underlying dispute giving rise to the work stoppage, injunctive relief was improper. In doing so, they read *Boys Markets* too literally, as requiring that the strike be "over" an arbitrable grievance.

All that *Boys Markets* requires is that the dispute be subject to adjustment and arbitration under the labor agreement. Here, as in *Boys Markets,* the core purpose of Norris LaGuardia is not sacrificed by the issuance of an injunction directing the employees to return to work and to arbitrate the issue as to whether their conduct violates the labor agreement.

The decision of the Court of Appeals in this case is consistent with its earlier decisions in *Monongahela Power Co. v. Electrical Workers Local No. 2332,* 484 F.2d 1209 (4th Cir. 1973), *Pilot Freight Carriers v. Int'l Bhd. of Teamsters,* 497 F.2d 311 (4th Cir. 1974), *cert. denied,* 419 U.S. 869 (1974), and *Wilmington Shipping Co. v. Int'l Longshoremen's Ass'n,* ..... F.2d ....., 86 LRRM 2846 (4th Cir. 1974), *cert. denied,* 419 U.S. 1022 (1974), with the decision of the Third Circuit in *NAPA Pittsburgh v. Automotive Chauffeurs,* 502 F.2d 321 (3rd Cir. 1974), *cert. denied,* 419 U.S. 1049 (1974), and *Island Creek Coal Co. v. United Mine Workers, et al.,* 507 F.2d 650 (3rd Cir. 1975) (pet. for cert. pending), and with the decision of the Seventh Circuit in *Inland Steel Co. v. Local Union 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974).[2]

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2. Many district courts, on the authority of *Boys Markets,* have also enjoined work stoppages resulting from the refusal of employees to cross a picket line es-

Most of the arguments presented by Petitioners here have previously been considered, and rejected, by this Court in denying certiorari in *Pilot Freight Carriers, Wilmington Shipping Co.,* and *NAPA Pittsburgh, supra.* The contrary decisions by other courts cited by Petitioners at pages 6 to 7 of the Petition for Certiorari represent either too narrow an interpretation of *Boys Markets* or are distinguishable on their facts.

Petitioners assert as their principal reason for the grant of certiorari that there is a conflict among the Circuits as to whether a federal court should enjoin a work stoppage resulting from the refusal of employees to cross a picket line established by non-employees, who are members of the same Union, and they cite in support of this asserted conflict *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen,* 468 F.2d 1372 (5th Cir. 1972), and *Buffalo Forge Co. v. United Steelworkers of America,* ..... F.2d ....., 89 LRRM 2303 (2d Cir. 1975). What Petitioners seek to ignore, however, is the fact that in every case in which the United Mine Workers Union has been involved, the courts have unanimously held that a dispute as to whether its members had a right to honor the picket line of non-employee members of the Union was an arbitrable matter under the "Settlement of Disputes" procedure of the National

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tablished by non-employees and have ordered arbitration of the issue as to whether such conduct violates the agreement: *General Cable Corp. v. IBEW Local 1798,* 333 F. Supp. 331 (W.D. Tenn. 1971); *Southwestern Illinois Coal Corp. v. Local 1392, UMW,* 40 CCH Lab. Cas. ¶ 13,531 (E.D. Ill. 1972), *aff'd on other grounds,* Case No. 7-4 (Temp. Emer. Ct. App. 1973); *Barnard College v. Transport Workers,* 372 F. Supp. 211 (S D. N.Y. 1974); *Bethlehem Mines Corp. v. UMWA,* 375 F. Supp. 980 (W.D. Pa. 1974).

Bituminous Coal Wage Agreement and that the work stoppage was, therefore, enjoinable under *Boys Markets.*[3] Thus, on the issue before the Court in this case, there is no conflict among the Circuits.

Petitioners' reliance on the right of employees under Section 7 of the National Labor Relations Act to honor a foreign picket line is misplaced and cannot serve to legalize this work stoppage.[4]

In *Labor Board v. Rockaway News Co.,* 345 U.S. 71, 80 (1953), this Court held that the statutory right of employees to refuse to cross a picket line of another Union may be waived, and is waived, by the action of their Union in agreeing to a no-strike clause.

In *Monongahela Power Co. v. Electrical Workers Local No. 2332,* 484 F.2d 1209 (4th Cir. 1973), the Court rejected the contention that the protected right of employees to honor a foreign picket line prevented the issuance of a *Boys Markets* injunction and an order directing arbitration, saying at page 1214:

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3. *Inland Steel Co. v. Local Union 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974); *Armco Steel Corp. v. United Mine Workers,* 505 F.2d 1129 (4th Cir. 1974); *Island Creek Coal Co. v. United Mine Workers of America, et al.,* 507 F.2d 650 (3rd Cir. 1975) and District Court cases cited in note 2, *supra.*

4. It should be noted that in the present case there is no "picket line" or "protection of rights" clause conferring upon employees the right to refuse to cross a picket line at the premises of their employer and specifying that any such refusal will not constitute a violation of the agreement. If the parties had intended to confer upon employees the contractual right to honor a foreign picket line, they could and would have done so.

> "While there exists a statutory right of employees to refuse to cross a picket line of another union, 29 U.S.C. § 158(b), this right may be waived, and was waived here, by the action of their union in agreeing to a no-strike clause. NLRB v. Rockaway News Supply Co., 345 U.S. 71, 80, 73 S.Ct. 519, 97 L.Ed. 832 (1953)."

The Court found its earlier decision in *NLRB v. Union Carbide Corp.,* 440 F.2d 54 (4th Cir. 1971) to be distinguishable because the employees there were not covered by a collective bargaining agreement, and, consequently, were not subject to an express or implied no-strike obligation.

In the present case, the Court of Appeals correctly concluded that the statutory right to honor a foreign picket line was waived by the action of the Union in agreeing to a broad arbitration clause which gives rise to an implied no-strike obligation.

Gary-Hobart Water Corporation, 210 NLRB No. 87, 86 LRRM 1210 (1974), enf'd sub. nom. *Gary Hobart Water Corp. v. NLRB,* 511 F.2d 284 (7th Cir. 1975) upon which Petitioners rely is clearly distinguishable on a number of different grounds.

The present case arises under Section 301 of the Labor-Management Relations Act of 1947, as amended, and involved the claim by the Employer that the Union was contractually obligated to submit the dispute as to whether its employee-members had the right to refuse to cross a picket line established by non-employees allegedly protesting the gasoline shortage to arbitration under the National Bituminous Coal Wage Agreement

of 1971. On the other hand, in *Gary-Hobart,* the issue was not whether the dispute was arbitrable and hence enjoinable, but whether the Employer had violated Sections 8(a)(1) and (3) of the National Labor Relations Act by discharging clerical employees who refused to cross a picket line of striking production and maintenance employees of the same Employer. Significantly, the Board, in the first instance, refused to decide the case on the merits and, instead, deferred to arbitration.[5] *Gary-Hobart Water Corp.,* 200 NLRB 647 (1972). However, when the Employer subsequently refused to arbitrate, the Board agreed to decide the case on the merits.

In its subsequent decision on the merits, the Board recognized that ". . . the right to engage in sympathy strikes or to refuse to cross another's picket line may be waived by appropriate provisions in a collective-bargaining agreement." The Board agreed with the contention of the General Counsel and charging party that "the waiver of the right to strike is only as extensive as the scope of the grievance procedure of the contract in question," and that "when the subject of the dispute is not cognizable under the grievance-arbitration procedure the *quid pro quo* for the no-strike clause is no longer present and the no-strike clause does not

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5. The Board did so because of its view that the resolution of the threshold issue (whether the no-strike clause of the collective bargaining agreement prohibited the sympathy strike of the clerical unit) turned on the meaning and application of the no-strike clause and the alleged unfair labor practices were intimately intertwined with the interpretation of the contract. *Gary-Hobart Water Corp.,* 200 NLRB 647, 648 (1972).

apply." The Board also referred in its analysis to *Gateway Coal Co.* and noted that this Court found the strike in *Gateway* unprotected "on the basis of the very broad arbitration clause included in the contract which governed disputes. . . ." *Gary Hobart, supra,* 86 LRRM at 1214.

The Seventh Circuit, in enforcing the Board's order, distinguished its earlier decision in *Inland Steel Co. v. Local 1545, United Mine Workers of America, supra,* on the ground that the exceptionally broad arbitration clause there (which is identical to the one involved here) encompassed the dispute as to whether employees had a contractual right to honor a picket line established by non-employee members of the UMW. (511 F.2d at 288).

In the present case, as in *Gateway Coal Co.* and *Inland Steel,* because of the breadth of the arbitration clause, the dispute *does* fall within the scope of the grievance-arbitration procedure, and since the dispute *is* subject to resolution under this procedure, the right to strike was waived. Thus, it is clear that if *Gary-Hobart* has any relevance at all to the facts of this case, its reasoning supports the decision of the Fourth Circuit in the present case.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

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